

REMARKS

Applicants request reconsideration of the Final Office Action mailed March 29, 2006 as one of the references relied upon in the rejections is not prior art to this application.

On March 29, 2006 a Final Office Action was mailed in connection with the referenced application. In the Final Office Action, claims 9, 18 and 27 were objected to as being dependent on rejected base claims but were indicated to be allowable in rewritten in independent form. Claims 1-5, 8, 10-14, 17, 19-23 and 26 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wagner et al., U.S. Patent No. 6,002,395 (hereinafter Wagner) in view of Shirayanagi, U.S. Patent Publication No. 2001/0050752 (hereinafter Shirayanagi). Claims 6-7, 15-16 and 24-25 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wagner and Shirayanagi and further in view of Ikemoto, U.S. Patent No. 5,969,717 (hereinafter Ikemoto). On June 14, 2006, Applicants, by and through their attorneys, filed a Request for Pre-Appeal Conference & Brief. On July 20, 2006, a Notice of Panel Decision from Pre-Appeal Brief Review was mailed.

In preparing the appeal brief for the referenced application, the undersigned determined that the underlying rejections under § 103(a) are improper because Shirayanagi is not prior art to this application. More particularly, Shirayanagi has U.S. filing date of May 9, 2001. On December 20, 2006, the undersigned conducted a telephone interview with Examiner Zhou and explained that the Shirayanagi reference was not prior art to this application. Examiner Zhou stated that while the Shirayanagi publication was not prior art to the application, the patent resulting from the Shirayanagi publication was prior art, U.S. Patent No. 6,554,426. The Examiner suggested that Applicant file its appeal brief and make its arguments regarding the prior art status of Shirayanagi in the brief. Instead of filing an appeal brief, Applicants filed the accompanying Reuquest for Continuing Examination.

It is axiomatic that a U.S. Patents and U.S. Patent Publications have an effective prior art date of their respective ***U.S. filing dates***. **Foreign application filing dates that are claimed via 35 U.S.C. § 119(a)-(d), (f) or 365(a)** may not be used as 102(e) dates. M.P.E.P. § 2136.03. Here, Shirayanagi has a U.S. filing date of May 9, 2001 and a Foreign Application Priority Date of May 10, 2000. The present application has an effective filing date of August 8, 2000, which is prior to the Shirayanagi's U.S. filing date. Accordingly, Shirayanagi is not prior art to this application. It follows that the rejections that rely upon Shirayanagi must be withdrawn.

In view of the foregoing remarks, it is asserted that the application is in condition for allowance. Reconsideration of the rejection and a favorable action on the merits are respectfully requested.

Respectfully submitted,

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